

Message Text

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TO AMEMBASSY OTTAWA PRIORITY
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E.O. 11652: N/A

TAGS: ETRD, CAN, FR

SUBJECT: ANTITRUST: GRAND JURY INVESTIGATION OF THE
SULPHUR INDUSTRY

1. THE DEPARTMENT RECEIVED ON DECEMBER 15 THE FOLLOWING
LETTER NOTIFICATION OF AN ANTITRUST GRAND JURY INVESTIGA-
TION OF THE SULPHUR INDUSTRY.FROM THE DEPT OF JUSTICE (DOJ):

QUOTE: THIS IS TO ADVISE YOU THAT A FEDERAL GRAND JURY
EMPANELLED IN THE SOUTHERN DISTRICT OF NEW YORK WILL
CONDUCT AN INVESTIGATION OF THE ELEMENTAL SULPHUR INDUSTRY.
WE HAVE PREVIOUSLY ADVISED YOUR OFFICE THAT THE SAME GRAND
JURY IS CONDUCTING A NITROGEN FERTILIZER INVESTIGATION.
THE SULPHUR INQUIRY IS PART OF OUR CONTINUING COMPREHEN-
SIVE INVESTIGATION OF THE FERTILIZER INDUSTRY, AN INVESTI-
GATION KNOWN TO YOU FOR TWO YEARS.

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-- THE NEW YORK GRAND JURY WILL FOCUS ON POSSIBLE VIOLATIONS OF THE SHERMAN ANTITRUST ACT, SEEKING INFORMATION ON THE FORMATION AND IMPLEMENTATION OF AGREEMENTS AND CONSPIRACIES IN RESTRAINT OF UNITED STATES TRADE IN THE PRODUCTION AND DISTRIBUTION OF SULPHUR. THIS INVESTIGATION IS IN A VERY PRELIMINARY STAGE. WHILE CONDUCT BY UNITED STATES ENTITIES WITHIN U.S. MARKETS IS LIKELY TO BE

A CENTRAL FOCUS, IT MAY DEVELOP THAT FIRMS OR INDIVIDUALS IN OTHER SULPHUR PRODUCING NATIONS MAY BECOME INVOLVED.

-- CANADA AND FRANCE ARE THE ONLY O.E.C.D. MEMBER STATES WITH SUBSTANTIAL ELEMENTAL SULPHUR PRODUCTION. ACCORDINGLY, YOU MAY WISH TO ADVISE THE GOVERNMENTS OF EACH OF THESE OF THE FACT OF THIS INVESTIGATION, PURSUANT TO THE 1967 COUNCIL RECOMMENDATION. END QUOTE.

2. AS INDICATED IN THE LETTER, DOJ HAS, FOR APPROXIMATELY TWO YEARS, BEEN CONDUCTING A COMPREHENSIVE INVESTIGATION OF THE FERTILIZER INDUSTRY. THIS HAS INVOLVED THE EM-PANELLING OF GRAND JURIES IN THE PHOSPHATE AND NITROGEN SECTORS, ABOUT WHICH PREVIOUS COMMUNICATIONS HAVE BEEN SENT TO PARIS, AND THE POTASH GRAND JURY AND SUBSEQUENT INDICTMENT WHICH ARE WELL KNOWN IN OTTAWA. THE RECENTLY CONVENED GRAND JURY IN THE CASE OF SULPHUR IS WITHIN THE FRAMEWORK OF THE OVERALL FERTILIZER INVESTIGATION.

3. DOJ INFORMED US THAT ON NOVEMBER 17, SOME 30 SUB-POENAS WERE ISSUED PURSUANT TO THE SULPHUR INVESTIGATION, TO VARIOUS U.S. CORPORATIONS SEEKING PRICING AND PRODUCTION DATA AND DOCUMENTS REFLECTING MEETINGS WHICH TOOK PLACE AMONGST THE PRODUCERS. WHILE ALL SUBPOENAS WERE ISSUED TO DOMESTIC CORPORATIONS ONLY, DOJ INFORMS US THAT SOME RELATE TO THE PRODUCTION OF SULPHUR IN CANADA BY SUBSIDIARIES WHICH HAVE SIGNIFICANT EXPORTS TO THE U.S. THE DOJ SPOKESMAN SAID THAT THE SUBPOENAS DO NOT SEEK INFORMATION FROM FRANCE BUT THAT THERE MAY AT A LATER STAGE BE SOME INVOLVEMENT OF FRENCH PRODUCERS. THIS SHOULD NOT BE INTERPRETED TO MEAN THAT CANADIAN OR FRENCH PRODUCERS ARE LIKELY TO BE THE SUBJECTS OF U.S. INDICT-

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MENTS.

4. FOR OTTAWA. AS IS KNOWN TO THE EMBASSY, THE GOC HAS ALREADY HEARD OF THIS INVESTIGATION FROM THE CANADIAN SUBSIDIARY OF MOBIL OIL CORPORATION. MOBIL OIL U.S. WAS THE RECIPIENT OF A SUBPOENA. SEVERAL DAYS AGO, PURSUANT TO THE MITCHELL BASFORD AGREEMENT, A REPRESENTATIVE OF CCA (MR. BERTRAND) WAS IN TOUCH WITH THE DOJ, AT WHICH

TIME AN EXPLANATION OF THE INVESTIGATION WAS GIVEN.
THE DOJ SPOKESMAN SAID THAT BERTRAND WAS SATISFIED WITH
THIS BELATED FORM OF NOTIFICATION. NOTWITHSTANDING, THE
EMBASSY IS REQUESTED TO NOTIFY APPROPRIATE GOC AUTHORITIES
OF THE DOJ LETTER AS WELL AS THE SUBPOENA INFO. YOU CAN
AT YOUR DISCRETION EXPRESS REGRET THAT NOTIFICATION

ON THIS MATTER WAS NOT MADE EARLIER, BUT THAT WE OF COURSE

STAND READY TO COOPERATE IN ANY WAY POSSIBLE. WE WOULD
HOPE THAT GOC WOULD SIMILARLY COOPERATE IN THE SPIRIT
OF MITCHELL-BASFORD.

5. FOR PARIS. PLEASE MAKE A STANDARD NOTIFICATION TO
APPROPRIATE FRENCH AUTHORITIES PURSUANT TO OECD PROCEDURES
ON ANTITRUST NOTIFICATION AND REPORT ANY SIGNIFICANT
REACTIONS. KISSINGER

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